No. 06-1273

IN THE
Supreme Court of the United States

MICHAEL J. MAJOR,

Plaintiff,

v.

INTERNAL REVENUE SERVICE OF THE U.S. DEPARTMENT OF TREASURY; GREGORY M. HAHN individually and in his capacity as IRS employee; CHARLES JOSHUA individually and in his capacity as IRS employee; JAQUELINE CHOWNING individually and in her capacity as IRS employee,

Defendants.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NINTH CIRCUT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the IRS and federal judges should be allowed to conspire to overrule an act of Congress: The IRS Restructuring And Reform Act of 1998?

2. Whether the actions of the IRS in this case constitute a violation of the Racketeering Influenced And Corrupt Organizations Act (RICO)?

LIST OF ALL PARTIES

MICHAEL J. MAJOR
Plaintiff,

v.

INTERNAL REVENUE SERVICE OF U. S., DEPARTMENT OF TREASURY; GREGORY M. HAHN individually and in his capacity as IRS employee; CHARLES JOSHUA individually and in his capacity as IRS employee; JACQUELINE CHOWNING individually and in her capacity as IRS employee,
Defendants.

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinions of the United States Ninth Circuit Court of Appeals appear at Appendices A, B, and C, and at the U.S. District Court, Western District of Washington at Appendices D and E.

JURISDICTION

The dates on which the Court of Appeals decided this case are September 15 and November 15, 2006.

This Court has jurisdiction pursuant to Rule 10 which states that a writ of certiorari may be granted when a United States court of appeals "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The Constitution of the United States, Amendments 5,8, and 14. Titles VI and VII of the Civil Rights Act of 1964. 14 U.S.C § 1983. Racketeering Influenced And Corrupt Organizations Act (RICO). IRS Restructuring And Reform Act of 1998 (RRA).

STATEMENT OF THE CASE

Both the appeals and district courts based their decisions on the effective overthrow of the IRS Restructuring And Reform Act of 1998 (RRA). This was accomplished through the deliberate ignoring of the Act and a reliance upon obsolete citations which preceded the Act.

The center of both courts' arguments was that the petitioner failed to properly invoke the administrative remedies under 26 U.S.C. § 7433. This disregarded the fact that I.R.C. § 7433 had been amended by and incorporated into RRA § 1302(a). Furthermore, the RRA eliminated the IRS Office of Chief Inspector and transferred all its powers and duties to a new, independent Treasury Inspector General for Tax Administration (TIGTA) within the Treasury Department. Act § 11O3(c)(1) amended the Inspector General Act of 1978 § (a)(1)(L). A central purpose of TIGTA is to "detect and to defer fraud and abuse in IRS programs and operations." TIGTA has published that it is the appropriate agency to report "mismanagement or violations of law, rules, or regulations by the IRS employees or contractors." Petitioner informed the courts he had filed at least five separate complaints of IRS misconduct with TIGTA as well as to over a dozen other parties within the IRS and its oversight bodies, all named as avenues for redress by the RRA, and produced for the courts letters from these various parties that they would take no action on these complaints.

In fact, it's probably fair to say that the petitioner has evoked the appropriate remedies for IRS misconduct more than any other taxpayer in history.

The district court ruled it had no authority to terminate IRS employees. Petitioner never asked it to. The Taxpayer Bill of Rights incorporated into the RRA (Act § 31O2

(b) allows a taxpayer to sue the government for damages for unreasonable behavior of IRS employees. This right was denied.

The lower court stated "the Ninth Circuit has never recognized a constitutional violation rising from the collection of taxes." Precisely. This was the reason Congress passed the RRA. Laws have long been on the books allowing citizens to take legal action against the IRS for its unconstitutional activities. Since judges never enforced these laws, Congress passed the RRA, giving it more teeth. In fact, 1203(b)(3)(A) explicitly states that IRS misconduct as a violation of "any right under the Constitution of the United states." Under (B) it states "any civil right established under Title VI or VII of the Civil Rights Act of 1964."

Petitioner invoked 42 U.S.C. § 1983 which states "A federal cause of action may be maintained against a state officer who under 'color of law' deprives a person of his civil rights."

Using the color of legitimate collection procedures, IRS personnel violated several explicit provisions of RRA, including destroying records to conceal mistakes, violating a taxpayer's constitutional and civil rights, and conducting audits for the purpose only of harassment. By eliding any reference to the RRA, the lower court claimed the IRS personnel had "partial immunity" and the IRS lawyer "absolute immunity." That court equated the lawyer's actions with "the filing of an allegedly false affidavit, and the inclusion of allegedly false statements in the complaint." But this lawyer made the transition from counselor to criminal, for he forged the petitioner's tax return, as part of a strategem to allow the IRS to collect more per month than the petitioner earned to drive him and his children into penury,

homelessness, starvation and death. This is not a matter of allegation, but of fact. The lawyer admitted the forgery in open court. This confession is in the transcript. The unforged return and the forged return are facts, as are the written documentation demanding more per month than the petitioner earns. The appeals court, in eliding these facts, glossed petitioner's "contentions " as " unpersuasive".

In eliding the RICO actions of extortion, embezzlement, forgery, and threat of institutional murder, both courts argued petitioner "failed to articulate the existence of an enterprise beyond that which was inherent in the alleged racketeering, and the mechanisms for controlling and directing the enterprise on an ongoing basis." But this is exactly what the petitioner did do. The IRS is a governmental agency (and various states have recognized government agencies as RICO enterprises), and certainly is an enterprise, with well-defined rules, regulations, and procedures. Petitioner detailed how the IRS personnel used the color of their bureaucratic routines for illegal purposes. The mechanisms for controlling and directing the enterprise on an ongoing basis include utilizing the various safeguards RRA built into its reform, the tapayer advocates, internal IRS court, supervisory reviews, and so on, as instruments of bureaucratic brutality designed simply to crush the citizen, exactly analagous to Mafia "legitimate" storefronts.

The other ongoing mechanism is the IRS, by one way or another, inveigling federal judges to disregard, that is to say, to overrule the RRA, thus allowing the IRS to continue what this Court has termed, in another context, its rampage of "official lawlessness."

The lower court in stating "the Ninth Circuit has never recognized a constitutional violation rising from the collection

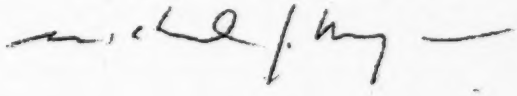
of taxes" and both courts scrupulously avoiding any mention of the RRA, and referring to antiquated citations, which, in terms of legal relevance, might as well be from Babylonian law, have demonstrated that this case is not an anomaly. Any citizen who invokes the RRA against IRS wrongdoing will meet a similar fate. The only conclusion is that the Ninth Circuit has never enforced the RRA and never will.

That federal judges have allowed themselves to become stooges of a government agency which has learned its ethical values from Al Capone means the destruction of the separation of powers and the loss of the independence of the judiciary - unless this Court takes the necessary action to uphold the rule of law.

The petition for a writ of certiorari should be granted.

Dated: February 8, 2007

Respectfully submitted by,



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REASONS FOR THE WRIT

The reasons relied on for the allowance of the writ include the fact that the clear purpose of the IRS is to effectively overrule and deny any enforcement of the laws passed by Congress: the IRS Restructuring And Reform Act of 1998 (RRA) and Racketeering Influenced And Corrupt Organizations Act (RICO). Since the IRS stratagem represents the destruction of both the separation of the powers and the independence of the judiciary, and has been condoned by the lower federal courts, this Court must act to uphold the rule of law.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-36118
D.C. No. CV-O5-01038-TSZ

MICHAEL J. MAJOR,
Plaintiff - Appellant,

v.

UNITED STATES INTERNAL
REVENUE SERVICE; et al.,
Defendants - Appellees.

JUDGMENT

Appeal from the United States District Court for the Western District of Washington (Seattle).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED.**

September 15, 2006

APPENDIX-B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 05-36118
D.C. No. CV-05-01038-TSZ

MICHAEL J. MAJOR,
Plaintiff- Appellant

v.

UNITED STATES INTERNAL REVENUE SERVICE; et al.,
Defendants - Appellees.

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding
Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges:

Michael J. Major appeals pro se from the district court's judgment dismissing his action for injunctive relief and damages against the Internal Revenue Service and its employees for actions associated with the collection of federal taxes.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2)

We have jurisdiction under 28 U.S.C. § 1291. We review de novo. Steel v. United States, 813 F.2d 1545, 1548 (9th Cir. 1987) (dismissal based on sovereign immunity); Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004) (dismissal of Bivens action); Wagh v. Metris Direct, Inc., 348 F.3d 1102, 1106 (9th Cir. 2003) (dismissal for failure to state a claim). We affirm.

The district court properly dismissed Major's damages claims against the IRS based on sovereign immunity. See Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985) (a suit against IRS employees is essentially a suit against the United States). Additionally, Major's request for injunctive relief was barred by the Anti-Injunction Act. See 26, U.S.C. § 7421(a) ("no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person"); Sokolow v. United States, 169 F.3d 663, 664-65 (9th cir. 1999).

The district court properly dismissed Major's claims against individual IRS agents for actions taken to collect taxes because Congress has established a comprehensive statutory scheme for seeking redress in federal tax matters and, contrary to Major's contentions, he failed to properly invoke these administrative remedies. See 26 U.S.C. § 7433; Adams, 355 F.3d at 1186 ("Because the Internal Revenue Code gives taxpayers meaningful protections against government transgressions in tax assessment and collection, we hold that Bivens relief is unavailable for a suit against IRS auditors and officials.").

The district court also properly dismissed Major's RICO claim because he failed to allege the elements of such a claim. See Miller v. Yokohama Tire Corp., 358 F.3d 616, 620 (9th Cir. 2004) (holding that a prima facie RICO claim must articulate

"(1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity"); Wagh, 348 F.3d at 1111-12 (holding that a RICO plaintiff must articulate the existence of an enterprise beyond that which was inherent in the alleged racketeering activity, and the mechanisms for controlling and directing the enterprise on an ongoing basis).

Major's remaining contentions are unpersuasive.
AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-36118
DC # CV-05-01038-TSZ
Western Washington (Seattle)

MICHAEL J. MAJOR,

Plaintiff- Appellant,

v.

UNITED STATES INTERNAL REVENUE SERVICE; et al,

Defendants - Appellees.

ORDER

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges

The panel has voted to deny Major's petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

No further filings shall be accepted in this closed appeal.

November 15, 2006

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C05–1038Z

MICHAEL J. MAJOR,
Plaintiff,

v.

INTERNAL REVENUE SERVICE OF THE U.S.; DEPARTMENT OF TREASURY; GREGORY M. HAHN individually and in his capacity as IRS employee; CHARLES JOSHUA individually and in his capacity as IRS employee; JACQUELINE CHOWNING individually and in her capacity as IRS employee,
Defendants.

ORDER

This matter comes before the Court on Defendants' motion to dismiss, docket no. 8.

On June 7, 2005, Michael J. Major (Plaintiff) filed a complaint naming as Defendants the Internal Revenue Service (IRS) and three individual IRS employees: 1) Gregory Hahn, an IRS attorney in Seattle; 2) Charles Joshua, an IRS auditor; and 3) Jacqueline Chowning, an IRS revenue officer. Plaintiff alleges various RICO conspiracy and constitutional violation against Defendants including: 1) failure to respond to Plaintiff's

requests for information; 2) harassment/retaliation; 3) destruction of documents; 4) forgery on Plaintiff's 1999 IRS Form 1040; and 5) submission of the forged 1999 return to the Tax Court. Plaintiff seeks injunctive relief and monetary relief for "compensatory and other damages" in the amount of at least $1.7 million for intentional infliction of emotional distress.

The IRS selected Plaintiffs 1999 income tax return for audit in July 2001. Defendant Joshua was assigned to verify the number of Plaintiffs dependent exemptions and items contained within Schedule C of the return. Through written correspondence, Defendant Joshua requested substantiation for various items. It is undisputed that Plaintiff did not provide substantiation, but Plaintiff alleges that he wrote a letter stating that the applicable documents were lost and that he would reconstruct them.

In October 2001, Plaintiff sent Defendant Joshua an offer-in-compromise (OIC). Initially, Defendant Chowning was assigned to review the OIC, and she determined that the offer might be acceptable if it was restricted to his liabilities for tax years 1995 and 1997. However, Plaintiff alleges that the OIC was to include tax year 1999, and insisted that Defendant Chowning include his 1999 liabilities. Defendant Chowning consulted with Defendant Joshua regarding the ongoing 1999 audit, and Defendant Chowning also requested that Plaintiff substantiate his business expenses. After researching Plaintiff's audit and not receiving any substantiation, Defendant Chowning determined that compromise was unwarranted and rejected the OIC because Plaintiff could possibly fully pay the debt.

Defendant Joshua's audit resulted in the IRS issuing a notice of deficiency to Plaintiff for tax year 1999 because Plaintiff was not entitled to certain dependency deductions on his Form 1040. Plaintiff's 2000 return was also audited and

resulted in a notice of deficiency. Through Plaintiff's petition, both cases were combined and are currently pending in the United States Tax Court. See Docket Report, Michael Joseph Major v. Commissioner, Docket Nos. 16592-02 & 6343-03 (T.C. filed Oct. 23, 2002 and Apr. 29, 2003). Defendant Hahn is counsel for the IRS in that litigation. Notably, the Tax Court denied Plaintiffs motion for summary judgment holding that Plaintiffs allegation of misconduct by Defendants Hahn, Joshua, and Chowning were without merit.

Defendants grounds for their instant motion to dismiss are: 1) improper service of process; 2) lack of subject matter jurisdiction/sovereign immunity; and 3) failure to state a claim. Plaintiff timely responded to Defendants' motion to dismiss and simultaneously filed a motion for partial summary judgment, docket no. 11, against Defendant IRS.

I. DEFENDANTS' MOTION TO DISMISS

A. Motion to Dismiss Individual Defendants

When considering a motion to dismiss, the Court must "treat all of the well-pleaded allegations of the complaint as true." Miree v. DeKaib County, 433 U.S. 25, 27 n.1 (1977); see also Saylor v. Parker Seal Co., 975 F.2d 252, 254 (6th Cir. 1992). The Court must construe all the allegations in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). It must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Conley v Gibson, 355 U.S. 41, 45-46 (1957)

1. Bivens Claim

In the present case, Plaintiff sued individual Defendants

in their personal and individual capacity. Plaintiff alleges violation of his constitutional right to due process. The Court therefore construes Plaintiff's complaint as an action under Bivens v. Six Unknown Federal Agents, 403 U.S. 388 (1971), which allows, in certain circumstances, a suit for damages to be maintained against a federal actor in his or her individual capacity for alleged violation of constitutional rights. This is similar to an action under 42 U.S.C. § 1983, except that section 1983 applies to state officials, whereas Bivens applies to federal officials. Christian v. Crawford, 907 F.2d 808, 810 (8th Cir. 1990). Incidentally, Plaintiff's statement in his response that "I never evoked Bivens..." does not change the true character of his suit.

The Plaintiff alleges that his constitutional rights were violated by the individual Defendants' actions when: 1) auditing his 1999 Form 1040; 2) processing his OIC; and 3) appearing as counsel for the IRS in Plaintiff's pending Tax Court case. However, these alleged actions of Defendants are well within the tax-related scope of their official duties as IRS employees. See Christensen v. Ward, 916 F.2d 1462, 1476 (10th Cir. 1990)("Decisions to initiate, prosecute or continue proceedings such as audits and assessments are the official duties of IRS agents"). As such, a Bivens action is inapplicable in this case because Congress has created specific remedies under a comprehensive scheme' where alternatives to suits for damages against federal actors are available to resolve tax-related disputes. See Adams v Johnson, 355 F.3d 1179, 1185 (9th Cir. 2004) (holding that no Bivens remedy is available for alleged constitutional violations in the assessment and collection of taxes).

Congress has provided a statutory damages remedy for the reckless or intentional disregard of Internal Revenue Code

provisions by IRS employees when collecting taxes. See 26 U.S.C. § 7433. Furthermore, Congress unequivocally stated that § 7433 is "the exclusive remedy for recovering damages resulting from such actions." 26 U.S.C. § 7433(a). This provision does not mention constitutional violations; however several other circuits have concluded that § 7433 precludes Bivens actions against IRS agents for due process violations. Vennes v. An Unknown Number of Unidentified Agents, 26 F.3d 1448, 1454 (8th Cir. 1994); McMillen v. United States Dept of Treasury, 960 F.2d 187, 190 (1st Cir. 1991); Cameron v. Internal Revenue Service, 773 F.2d 126 at 129 (7th Cir. 1985); National Commodity and Barter Ass'n v. Gibbs, 886 F.2d 1240, 1248 (10th Cir. 1989). Moreover, the Ninth Circuit has "never recognized a constitutional violation arising from the collection of taxes." Wages v. Internal Revenue Service, 915 F.2d 1230, 1235 (9th Cir. 1990). As such, Plaintiff's attempt to sue individual defendants, who were clearly acting within their official capacity, is precluded by the alternate remedies that deal with tax-related disputes, specifically 26 U.S.C. § 7433(a).

'Specific alternative provisions are in place to resolve tax-related disputes. For example, 26 U.S.C. § 7433 provides a cause of action for damages sustained as a result of unauthorized action to collect federal taxes; and 26 U.S.C. § 7432 provides a cause of action against the United States for actual economic damages if an IRS officer knowingly or negligently fails to release a lien under 26 U.S.C. § 6325.

[2]26 U.S.C. § 7433(a) permits a suit for damages against the United States "[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Services recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title."

Plaintiff does not have an actionable Bivens claim for violation of due process. Moreover, Plaintiff has chosen not to invoke his proper remedies and cannot prove any set of facts which would entitle him to relief in this matter. Accordingly, pursuant to Fed. R. Civ. P. 12(b)(6), the Court concludes that Plaintiff fails to state a claim against the individual Defendants.

2. Qualified Immunity

Even if Plaintiff was capable of sufficiently pleading a Bivens claim, Defendants Joshua and Chowning are entitled to qualified immunity. Qualified immunity protects all federal officers when performing discretionary functions, unless the particular defendant violation "clearly established statutory or constitutional rights at the time the challenged action occurred of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity is not merely a defense to liability; it is also an immunity from suit. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). Plaintiff bears the burden of showing a violation of a "clearly established" constitutional right. Id. at 525 ("Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of the discovery"). Plaintiff argues that there was a violation of his constitutional rights because Defendants are allegedly depriving him of "life, liberty, or property, without due process of law" under both the V and XIV Amendments. He further alleges that Amendment XIII is being violated because he is effectively being forced into slavery by the IRS. There is no factual basis for Plaintiff's assertion; he has not been forced to provide any money or property to the IRS as of this date. Moreover, the Ninth Circuit has never recognized a constitutional violation arising from the collection

of taxes, and there is no credible evidence brought forth by Plaintiff to challenge that proposition. See Wages, 915 F.2d at 1235. Therefore, Defendants Chowning and Joshua are entitled to qualified immunity.

3 Absolute Immunity

Again, even if Plaintiff could sufficiently plead a Bivens claim, similar to Defendants Joshua and Chowning, Defendant Hahn is protected by immunity. Defendant Hahn is entitled to absolute immunity for his actions in preparing and defending the Commissioner's position in Tax Court. See Fry v. Melaragno, 939 F.2d 832, 837 (9th Cir. 1991). The touchstone for finding this immunity is whether the attorney's actions are intimately or closely associated with the judicial process. See Burns v. Reed, 500 U.S. 478, 485 (1991)("the filing of the allegedly false affidavit, and the inclusion of allegedly false statements in the complaint and other pleadings are all actions which clearly fall within this area of absolute immunity").

The submission of the allegedly forged tax return by Defendant Hahn falls within the scope of this immunity. Additionally, "the proper forum for challenge to these allegedly improper actions is in the adversary proceedings where they take place, or if warranted, in professional disciplinary proceedings, not in a separate suit for damages. try, 939 F.2d at 838. The Tax Court has already ruled on this issue and found no misconduct on the part of Defendant Hahn. Hence, the only proper forum for a challenge to these alleged actions would be in a professional disciplinary proceeding. Therefore, even if the facts were sufficient to support a Bivens claim, Defendant Hahn is protected by absolute immunity.

Defendants' motion to dismiss individual defendants is GRANTED

B. Motion to Dismiss Defendant United States

The only possible proper Defendant in this action is the United States because the IRS employees were acting in their official capacity. See Dungan v Rank, 372 U.S. 609, 622-23 (1962); Atkinson v O'Neil, 867 F.2d 589, 590 (10th Cir. 1989) ("when an action is one against named individual defendants, but the acts complained of consist of actions taken by defendants in their official capacity as agents of the United States, the action is in fact one against the United States"). Nonetheless, Plaintiff has failed to state a claim against the United States.

1 Exclusive Remedy of § 7433

a. Failure to Exhaust Remedies

26 U.S.C. § 7433 is the exclusive statute under which Plaintiff could bring an action against the United States, but Plaintiff has failed to sufficiently plead facts that withstand Defendants' motion to dismiss. Plaintiff has failed to show that he has exhausted the administrative remedies required by 26 U.S.C. § 7433(d). While he argues in his response that he did exhaust his administrative remedies as evinced by his numerous correspondence with various IRS officials, a large volume of correspondence does not equate to exhaustion of remedies. There is no evidence that he filed any administrative claim(s) under Treasury Regulation § 301.7433-1(e).

b. Reckless or Intentional Disregard

Furthermore, Plaintiff has failed to allege that an IRS employee "recklessly or intentionally disregarded any provision" of the Internal Revenue Code (IRC) or Treasury Regulation. Plaintiff does state in his reply that he did allege that the IRS employees were recklessly and intentionally disregarding all provisions of the IRC by virtue of the fact that they were "using the color of legitimate procedures for purposes

exactly the opposite for which they were designed." However, Plaintiff has only pled violations of RICO and constitutional rights relating to his audit and OIC, which do not fall within the scope of the IRC or Treasury Regulations. Wages, 915 F.2d at 1235 (holding that the Ninth Circuit has "never recognized a constitutional violation arising from the collection of taxes"). Plaintiff has not alleged with any specificity an IRC or Treasury Regulation that Defendant has violated. Therefore, under Fed. R. Civ. P. 12(b)(6), Plaintiff has failed to state a claim against the United States upon which relief can be granted[3].

Defendants' motion to dismiss Defendant United States is GRANTED.

C. RICO Claim

Plaintiff broadly alleges that the Court "has legal jurisdiction under the...Racketeer Influenced and Corrupt Organizations Act (RICO) ..." In response to Defendants' motion to dismiss, Plaintiff specifically alleges that Defendants should be punished under 18 U.S.C. § 1962 for "conducting or participating in the affairs of the enterprises through a pattern of racketeering activity or collection of an unlawful debt."

[3]Additionally, the Federal Tort Claims Act cannot serve as a basis for jurisdiction in a suit against the United States inasmuch as the taxpayer has neither shown nor alleged that he has filed the proper administrative claim with the IRS as required by 28 U.S.C. § 2675(a). See Caton v. United States, 495 F.2d 635 (9th Cir. 1974). Moreover, the provisions of the Federal Tort Claims Act specifically exclude claims based upon the performance of a discretionary function by a government officer and claims arising with respect to the assessment and collection of any tax. 28 U.S.C. § 2680(a) and (c). Hutchinson v. United States, 677 F.2d 1322, 1327 (9th Cir. 1982). Because Plaintiff's claim falls within this exception to the FTCA, this suit is barred by sovereign immunity. See Capozzoli v. Tracey, 663 F.2d 654 (5th Cir. 1981).

Nonetheless, Plaintiff has failed to properly allege a RICO claim, which requires that 1) a person has engaged in 2) a pattern of racketeering activity 3) connected to the acquisition, establishment, conduct, or control of an enterprise in order to state a claim under § 1964(c). See Delta Truck & Tractor, Inv. v. J. 1. Case Co., 855 F.2d 241, 242, (5th Cir. 1988), cert. denied 489 U.S. 1079 (1989). In particular, Plaintiff has failed to identify the "enterprise." The enterprise cannot also be the RICO defendant; therefore, the individual defendants cannot constitute the enterprise. See Switzer v. Coan, 261 F.3d 985 (10th Cir. 2001); Rae v. Union Bank, 725 F.2d 478, 480 (9th Cir. 1984).

Moreover, an enterprise requires some sort of structure, not simply a group of people who get together and commit to a pattern of racketeering activity. See Jennings v. Emry, 910 F.2d 1443,1440-41 Hence, any alleged conspiracy among the individual Defendants lacks the requisite structure to be considered an enterprise. Consequently, Plaintiff's failure to show the essential element of existence of an enterprise is fatal to his claim.

Defendants' motion to dismiss Plantiff's RICO claim is GRANTED.

II. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's motion for partial judgment, docket no 11, is STRICKEN as MOOT

It is so ORDERED

Dated this 17th day of October, 2005

Thomas S. Zilly
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C05-1038Z

MICHAEL J. MAJOR,
Plaintiff,

v.

INTERNAL REVENUE SERVICE, et al,
Defendants

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff has moved the Court to reconsider its order, docket no. 19, dismissing all Plaintiff's claims against Defendants. Plaintiff has not made a showing of manifest error in the Court's prior ruling nor has he made a showing of new facts or legal authority. See CR 7(h). In the Court's order granting Defendants' Motion to Dismiss, the Court stated that 26 U.S.C. § 7433 is the exclusive remedy for recovering damages in a tax related dispute such as Plaintiff's and that Plaintiff had failed to properly invoke that remedy. Additionally, no private right of action to force termination of Internal Revenue Service Agents exists, and such authority and discretion rests solely with the Commissioner of the IRS. See Public Law No. 105-206, Section 1203 (codified as a note to 26 U.S.C. § 7804). As such, Petitioner failed to plead a cognizable claim for damages or otherwise. Therefore, the Court hereby DENIES Petitioner's Motion for Reconsideration, docket no. 21.

(2) The Clerk is directed to send a copy of this Minute Order to Magistrate Judge Benton and all counsel of record. Filed and entered this 3rd day of November, 2005.

BRUCE RIFKIN, Clerk
s/CaseyCondon

Deputy Clerk